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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re P.I., a Person Coming Under the  
Juvenile Court Law.

H043656  
(Santa Clara County  
Super. Ct. No. 1-14-JD22745)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

P.I.,

Defendant and Appellant.

**I. INTRODUCTION**

P.I. is the mother of P.I., the child at issue in this juvenile dependency case. The mother appeals from the juvenile court's orders terminating jurisdiction and awarding sole legal and physical custody to the father, R.C., with supervised visitation for the mother. (Welf. & Inst. Code, § 362.4.)<sup>1</sup> The mother contends the juvenile court abused its discretion in failing to award her joint legal and physical custody of the child, and she challenges the findings underlying the supervised visitation order. We will affirm.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### ***A. Initial Dependency and Prior Appeal<sup>2</sup>***

On August 6, 2014, the Santa Clara County Department of Family and Children's Services (the Department) filed petitions under section 300, subdivisions (b) [failure to protect] and (c) [serious emotional damage], alleging that the child, then age six, and the child's then 13-month-old half-brother, I.I., came within the jurisdiction of the juvenile court because of the children's exposure to domestic violence perpetrated against the mother by N.P., I.I.'s father.

The whereabouts of the father were listed as "unknown" at the time the petition was filed, but the Department subsequently determined that the father was living in Rohnert Park. The father had not seen the child in about one year, and he expressed reservations about reinstituting visits with the child.

After a combined jurisdiction and disposition hearing held on October 21, 2014, the juvenile court sustained the allegations of the petitions. The juvenile court ordered the mother to have custody of both children, with family maintenance services and a case plan that included domestic violence counseling for the mother and an order prohibiting N.P. from contacting or communicating with the children. The juvenile court's orders included supervised visitation for the father, once a month.

The mother appealed from the juvenile court's disposition orders, but this court affirmed the orders.

### ***B. Supplemental Petition and Initial Hearing Report***

The Department filed a supplemental petition (§ 387) on May 15, 2015 and a first amended supplemental petition on May 18, 2015. The petitions alleged that the children were at substantial risk of harm because the mother was permitting them to be exposed to

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<sup>2</sup> This court granted judicial notice of the prior appeal in *In re P.I.* (July 27, 2015, H041703) [nonpub. opn.]. Facts in this section are taken from the prior opinion and the record in the prior appeal.

domestic violence by N.P. The petitions further alleged that the mother had not fully participated in nor benefitted from the court-ordered services, which had led to the children's continued exposure to domestic violence. Specifically, on May 7, 2015, the mother had allowed N.P. to come into her residence, where the children were present. N.P. had entered the residence in the early morning and hit the mother repeatedly. He had entered the residence again later that day, then hit and strangled the mother. The mother had not cooperated with police, who were called by a neighbor. The mother also had not disclosed the incidents to the social worker.

On May 19, 2015, the trial court ordered the children detained. The court ordered supervised visitation for the mother and unsupervised visitation for the father.

***C. Jurisdiction/Disposition Reports and Hearing***

The Department filed a jurisdiction/disposition report dated June 10, 2015, recommending the mother and the father be provided with family reunification services. The social worker described the mother as "reluctantly" participating in services. The mother did not consider herself a victim of domestic violence and had not yet demonstrated an understanding of the role she played in maintaining an abusive relationship.

The father was still living in Rohnert Park with his wife and two children. The child had visited with the father in late December of 2014 and in April of 2015. The father and the child both enjoyed the visits, and the father wanted the child to live with him. He would make sure the child visited with I.I.

In an addendum report, the Department reported that it had subpoenaed records showing that the mother had visited N.P. in jail 28 times between January 1, 2015 and March 27, 2015. The children had been present during at least three visits. The records also showed 280 calls between the mother and N.P., with an average call duration of 15 minutes.

In another addendum report, the Department reported on the mother's enrollment in a number of domestic violence programs and on an interview with the mother. The mother admitted she had posted bail for N.P., who had assured her that he had participated in treatment while in jail and that he would continue his treatment upon his release. She also admitted that N.P. had lived with her and the children after his release. After the May 7, 2015 incident, N.P. had called her from jail, but she had not returned his calls and had asked him to stop contacting her. The mother had also given away N.P.'s clothing. She now recognized her poor choices.

The child had been staying with the father every week from Sunday through Wednesday. From Wednesday through Sunday, the child stayed with a relative foster parent, and the mother visited with the child for at least two hours per day.

On July 13, 2015, the juvenile court sustained the first amended supplemental petition. The juvenile court placed the child with the father on family maintenance services. The court ordered supervised visitation for the mother as well as sibling visitation between the child and I.I.

#### ***D. Interim/Status Review Reports***

##### **1. September 29, 2015 Interim Review Report**

In an interim review report dated September 29, 2015, the Department reported on the mother's progress in her case plan. The mother had attended all but one of her domestic violence victims' support group classes and appeared to be "engaged in the process." The mother had identified a therapist and funding had been secured. The mother was working to enroll in two parenting classes that did not conflict with her work schedule or with each other. She had been attending a codependency group and a parenting intervention.

The mother had supervised visits with the child, and the child had visited with I.I., who was living with the maternal grandfather. The child was living with the father, attending school, and participating in individual counseling.

## **2. January 5, 2016 Status Review Report**

In a status review report dated January 5, 2016, the Department recommended that I.I. be reunified with the mother on family maintenance services. The Department recommended that the juvenile court terminate jurisdiction over the child and the father, award the father physical custody of the child, order joint legal custody for the mother and the father, and dismiss the dependency as to the child.

The child continued to regularly visit with the mother and I.I. on the second and fourth weekends of each month. The mother's visits had been unsupervised since November 12, 2015. The mother had completed her domestic violence victims' support group. The mother had participated in some individual therapy sessions but had missed three, claiming financial hardship. The mother still had not attended one of the parenting classes due to schedule issues, but she was enrolled in the other parenting class. She had not been attending the codependency group.

Both parents expressed concern about transportation of the child for visits. The father facilitated Skype calls between the mother and the child in addition to the visits. The child experienced some difficulty when transitioning between the maternal and paternal homes.

## **3. February 17, 2016 Addendum Report**

In an addendum report dated February 17, 2016, the Department reported on the mother's progress in her case plan. The mother had started individual therapy with a new therapist. The mother had been attending both Parenting Without Violence and Positive Parenting Program 0-12, and she had resumed her participation in the codependency group.

The mother was concerned about the father having custody of the child and wanted to spend more time with the child. The mother accused the father of failing to accommodate the mother's scheduled Skype calls with the child and of sending her to visits without clothes. The mother also told the Department that the father had

committed prior domestic violence and had spanked the child. The Department had conducted background checks on the father and determined that he did have a domestic violence case involving his ex-wife in 2007. The father admitted the incident and claimed to have changed; there was no evidence of any additional domestic violence incidents or of child welfare referrals.

The father expressed concern about the mother's accusations, which included posts on social media, and about the visitation and Skype schedule, which limited the child's ability to engage in weekend sports and spontaneous family activities. The father indicated that whenever he accommodated the mother's requests, the mother would ask for more things. The father had observed that the child returned "exhausted" after visits with the mother and expressed concern that the mother had "interrogated" the child during visits. The father had discerned that the mother had informed the child that the father did not want the child until recently. The father admitted he used spanking as a disciplinary measure, but he was open to learning different strategies.

The child had expressed to the social worker that she did not like her parents fighting. The child's therapist informed the social worker that the child was reluctant to talk about her past.

#### **4. March 14, 2016 Addendum Report**

The Department filed another addendum report dated March 14, 2016, in which it recommended that the juvenile court grant sole legal and physical custody to the father and return to supervised visits for the mother.

The mother had informed the child about upcoming court proceedings, and she had upset the child during a Skype call by informing the child that I.I. had returned to live with the mother. The mother told the social worker that she was trying to get the child back, and she accused the father and the social worker of hurting the child. The mother indicated she was reaching out to media outlets "to ensure [the child's] story is told."

The mother had emailed numerous staff at the Department, accusing the Department of being negligent.

The child was attending school regularly and participating in cheerleading. She had received a “Life Skill Award” at school and had been named “Star Student” of the week. According to the child’s therapist, the child was still adjusting to her past trauma, with symptoms such as bedwetting. Her symptoms had decreased since beginning therapy.

The father was facilitating visitation and encouraging the child to maintain a close relationship with the mother, despite his concerns, because he understood the importance of regular contact with the mother.

***E. Contested Hearing***

A contested hearing was held over three days in March of 2016.

**1. Testimony of the Mother**

The mother testified that she wanted to share custody of the child with the father. She did not want to pull the child out of her school and she wanted the child to have stability in her life, so she wanted the child to finish out the school year with the father, spending weekends and the summer with the mother. The mother believed she was capable of collaborating with the father about the child’s best interests.

The mother expressed frustration about the father not including her in educational decisions pertaining to the child and not being informed about the child’s medical care. The mother had not learned about the child getting an award at school until after it had occurred. Had the mother known in advance, she would have attended the ceremony. The father had, however, sent the mother a picture of the certificate. Additionally, the mother had attended a birthday celebration for the child at her school, following communication about the event with the father.

The mother acknowledged telling the child that I.I. had been returned to the mother’s care. The mother had asked the social worker and two therapists for advice on

how to tell the child. The social worker had not given the mother any suggestions. When the mother told the child that I.I. had come home, the mother consoled the child by explaining that the child was with her father, whereas I.I.'s father was not around. When the child reacted by crying, the mother reminded the child that she was safe and that both the mother and the father loved her. The mother also said she was "working on" getting the child back. After the conversation, the mother emailed the social worker to inform her of the conversation. The mother believed that if the child had been happy at the father's home, the child would not have reacted as poorly to the news of I.I.'s return.

The mother testified that she had benefited from individual therapy and described what she had learned from the various services she had received. The mother claimed to have had no contact with N.P. other than seeing him in court. She had changed her phone number after receiving calls from him in June of 2015. She had no intent to see him and believed that her prior contact with him was a mistake. She now understood that domestic violence involves emotional issues as well as physical abuse. She understood that exposure to domestic violence affects a child's development and behavior.

## **2. Testimony of the Social Worker**

The social worker testified, with the juvenile court finding her to be an expert in "risk assessment for children and families in dependency, as well as child development." She had been the social worker assigned to the child's case since December of 2014.

The social worker explained why she was recommending dismissal. The child was not at risk in "her current situation" and needed to know that her father's home was "a permanent place for her." Keeping the case open would preclude the child and the mother from "moving forward." It would be destabilizing for the child if there was still a possibility of returning to the mother. The child needed "emotional space" to begin addressing the trauma she had experienced. The child, mother, and father would all benefit from court orders with "clear directions" about communication and visitation.



The social worker also explained why she was not recommending co-parenting and why she was recommending supervised visitation. She did not believe the mother or the father were able to co-parent, because they were not communicating. She anticipated that the parents' communication would improve with dismissal and custody orders, because the stress of the case would be eliminated. She believed that with supervised visitation, "dysfunctional conversations" between the mother and child could be avoided, helping the mother and child trust each other and have a healthy relationship.

The social worker addressed the mother's testimony about not receiving information about the child's educational progress and medical care. The mother had not asked the social worker for that information, but the social worker's reports always included updates on those issues.

The social worker also addressed the mother's testimony about telling the child that I.I. had been returned to the mother's care. The social worker acknowledged that she had not given the mother any immediate advice about how to tell the child. She had told the mother they could talk about it later. If the mother had asked her again, the social worker would have recommended the mother reach out to the father and stepmother before telling the child.

### **3. Juvenile Court's Findings and Orders**

At the end of the contested hearing, the Department asked the juvenile court to award the father sole legal and physical custody of the child, with supervised visitation for the mother. The child's attorney agreed with the Department's recommendations. The mother requested the court continue services rather than dismiss the case. Alternatively, the mother requested the court order joint legal custody while awarding the father physical custody of the child, with unsupervised visitation for the mother.

The juvenile court issued its findings and orders on April 11, 2016. The court dismissed the dependency case and awarded the father sole legal and physical custody of the child. The court ordered the mother to have supervised visits one weekend per month

for five hours on Saturday and five hours on Sunday, plus supervised visitation for one week during winter break and two weeks during summer break. The court ordered the father to inform the mother of emergency medical issues and any non-routine medical issues, and to provide the mother with copies of the child's report cards.

The court first explained its decision to dismiss the dependency. While the case was open and emotions were "running high," the parents had not been able to co-parent effectively, but closing the case would allow everyone to move forward and facilitate co-parenting.

The court next explained why it was ordering supervised visitation for the mother. The mother had permitted the child to be exposed to "extremely serious domestic violence" and had prevented the child from moving forward after being placed with her father by telling the child that the mother was working to get the child back.

### **III. DISCUSSION**

The mother contends the juvenile court abused its discretion in failing to award her joint legal and physical custody of the child when it dismissed the dependency. The mother also challenges the findings underlying the supervised visitation order.

#### **A. Custody Order**

Section 362.4 provides that "[w]hen the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court," the juvenile court may issue "an order determining the custody of, or visitation with, the child." (See also *In re Roger S.* (1992) 4 Cal.App.4th 25, 30 (*Roger S.*)). The juvenile court's "focus and primary consideration" in determining custody "must always be the best interests of the child. [Citations.]" (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 (*Nicholas H.*)).

We review the juvenile court's custody orders at dismissal of a dependency case for abuse of discretion. (See *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285,

300-301 (*Bridget A.*.) Thus, this court “may not disturb the order unless the court ‘ “exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’ ” ’ [Citations.]” (*Ibid.*)

The mother contends that in making its determination of the best interests of the child, the juvenile court was required to consider the factors set forth in Family Code section 3011.<sup>3</sup> However, as the Department points out, a dependency proceeding before the juvenile court is not governed by the statutes pertaining to family court. (See, e.g., *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712 [there are “significant differences” between the family court and the juvenile court focus when determining the best interests of the child]; *Roger S.*, *supra*, 4 Cal.App.4th at pp. 30-31 [although the family court and juvenile court both consider the child’s best interests, “the juvenile court has a special responsibility to the child as *parens patriae* and must look at the totality of the child’s circumstances”].)

In arguing that the juvenile court should have awarded her joint custody, the mother notes that she had been addressing her failure to protect the child from domestic violence, that the father did not have regular contact with the child for much of the child’s life, and that the father had not included the mother in educational and medical issues or decisions. The mother notes that she made efforts to tell the child about I.I.’s return to the mother in a reassuring manner. She also points out that the evidence shows she loves the child and has made “great strides in her services.”

We acknowledge that the mother loves the child and has made progress in addressing the issues that led to the initial dependency and supplemental petition.

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<sup>3</sup> Family Code section 3011 requires a court to consider “(a) The health, safety, and welfare of the child. [¶] (b) Any history of abuse by one parent or any other person seeking custody . . . . [¶] . . . [¶] (c) The nature and amount of contact with both parents . . . . [¶] (d) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. . . .”

However, the record supports the juvenile court's finding that awarding sole legal and physical custody to the father was in the child's best interests. (See *Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268.) While living with the father, the child was doing well in school and was no longer exposed to domestic violence. The custody order ensured stability for the child so that she could continue to thrive. Prior to the custody order, there was stress and uncertainty in the child's life. The social worker testified that eliminating the uncertainty about custody would eliminate the stress the child was experiencing. In addition, the mother had created conflict by making various accusations about the father, which made the father reluctant to communicate and co-parent with her. The social worker testified that the custody order would provide structure to the family, which would reduce the conflict. Based on our review of the record, we conclude the juvenile court did not abuse its discretion by declining to order joint legal and physical custody. (See *Bridget A.*, *supra*, 148 Cal.App.4th at pp. 300-301.)

***B. Supervised Visitation Order***

The mother argues that the record does not support the juvenile court's findings with respect to supervised visitation, claiming that the findings were all "based on past events," such as the child's exposure to domestic violence and the mother's comments to the child about getting her back, rather than the circumstances present at the time of the contested hearing. The mother contends that these findings will make it difficult for her to ever show a "significant change of circumstances" justifying a change in custody. (See § 302, subd. (d).)

Contrary to the mother's suggestion, section 302, subdivision (d) does not preclude a family court from "considering evidence before or during the dependency proceeding." (*Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1172.) "In fact, the very task of the family court is to consider the events that occurred before the exit order in order to identify what concerns about the requesting party the juvenile court identified in

the exit order; this is the only means by which the family court can determine whether the requesting party has successfully addressed those concerns.” (*Ibid.*)

In finding that the child’s exposure to domestic violence justified supervised visitation, the juvenile court was essentially finding that the mother had not yet demonstrated that she would prevent the child from such exposure if she was awarded unsupervised visitation. At the time of the hearing, it had been less than a year since the mother had permitted N.P. back into the home and exposed the child to serious domestic violence. Thus, the mother can potentially make a later showing that this circumstance has significantly changed, by showing that she has continued to refrain from re-engaging in a relationship with N.P. and that she has not engaged in any other relationships that could result in the child’s exposure to domestic violence.

The juvenile court also ordered supervised visitation based on a finding that the mother had prevented the child from moving forward, after the child was placed with the father, by telling the child that the mother was working to get the child back. The juvenile court apparently believed that supervised visits would ensure the mother did not engage in any inappropriate communication with the child, such as discussions about the legal proceedings. The mother has the potential to make a later showing that she has not continued to have similar discussions with the child. Thus, the juvenile court’s findings do not preclude the mother from making a future showing that the circumstances had significantly changed and that a modification of the order is in the child’s best interests.

#### **IV. DISPOSITION**

The juvenile court’s April 11, 2016 orders are affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

*In re P.I.; DFCS v. P.I.*  
**H042656**